

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THEODUS JORDAN,

Plaintiff

V.

BOSTON PUBLIC SCHOOLS,

Defendant

Civil Action No. 10688-NMG

**DEFENDANTS' MOTION TO MODIFY SCHEDULING ORDER AND FOR
LEAVE OF COURT TO FILE A MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant Boston Public Schools and hereby respectfully requests that this Honorable Court Modify the Scheduling Order and grant the Defendant leave of court to file a Motion for Summary Judgment as well as supporting memorandum and documents pursuant to Fed.R.Civ.P. 56. As grounds therefore, the Defendant state the following:

1. The Plaintiff in this matter filed the above-captioned Complaint on or about April 1, 2004. (See Docket No. 2)
2. Defendant was served on July 28, 2005. (See Docket No.12).
3. The initial scheduling order called for discovery request to be filed by July 21, 2006, and answers submitted by September 21, 2006, deposition were to be completed by October 31, 2006 and motions for summary judgment were to be filed by November 30, 2006 with response by December 31, 2006. (See Scheduling Order).

4. Plaintiff requested, and was granted, a thirty-day extension on the discovery schedule. (Docket No. 21).
5. A joint request to extend discovery to January 31, 2007 was granted in November 2006. (Docket No. 25). This extension would place a deadline for Motions including summary judgment at or around February 28, 2007. However, as Plaintiff has not produced documents requested in May 2006 and Defendant has filed a Motion to Compel Document Production, which was recently granted on April 17, 2007. (See Docket No.28.)
6. Defendant has awaited filing a Motion for Summary Judgment to give opportunity for Plaintiff to produce said documents forthwith and to then review them.
7. However, based on a review of the Plaintiff's response to interrogatories and deposition in this matter, and documents already in Defendant's possession, the Defendant believes it has discovered grounds by which this matter could be resolved and/or disposed of by means of a Motion for Summary Judgment.
8. The Plaintiff cannot meet a prima facie case of race, age, or gender discrimination because he cannot meet all the elements necessary. Failure to establish all the elements of the prima facie case would result in the granting of summary judgment for the defendants. Colon v. US. Slip Copy 2006 WL 2345955 (D. Puerto Rico).
9. The Defendant wishes to file a Motion for Summary Judgment in an effort to pursue a just, speedy, and inexpensive determination of this action. The

Defendant has prepared such a motion in preliminary form and is prepared to file upon review of the Plaintiff's documents, or upon their continued absence, once the Court has issued a decision on the Defendant's Motion.

10. Allowance of Defendant's Motion for Leave of Court to File a Motion for Summary Judgment and supporting memorandum will best serve the interest of justice and judicial economy.

WHEREFORE, the Defendant, Boston Public Schools, respectfully moves this Honorable Court to grant leave of court to file a Motion for Summary Judgment and supporting memorandum pursuant to Fed.R.Civ.P. 56.

Dated: April 18, 2007

Respectfully Submitted,

DEFENDANT, THE CITY OF BOSTON,
By Its Attorney,
William F. Sinnott, Corporation Counsel

By:

/s/ Andrea Alves Thomas
Andrea Alves Thomas, BBO#660050
Assistant Corporation Counsel
Boston Public Schools, Office of Legal Advisor
26 Court Street, 7th Floor
Boston, MA 02108
(617) 635-9320

CERTIFICATE OF SERVICE

I, Andrea Alves Thomas, hereby certify that a true copy of the above document was served by Certified Mail, Return Receipt Requested, this 18th day of April, 2007 upon Plaintiff at:

Theodus Jordan
P.O. Box 840
Jamaica Plain, MA 02130-0036

/s/Andrea Alves Thomas
Andrea Alves Thomas